

ORIGINAL

IN THE SUPREME COURT OF OHIO

Brooklyn City School District Board Of Education,	:	Case No. 2015-1354
	:	
	:	
Appellant	:	Appeal from the Ohio Board of Tax Appeals
	:	
	:	
v.	:	
	:	
Cuyahoga County Board of Revision, et al.	:	
	:	
	:	
Appellees	:	BTA Case Nos. 2014-697 and 2014-1031

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MOTION BY APPELLEE, BIDDULPH RIDGE EXTENSION, LLC, TO DISMISS APPEAL FOR FAILURE OF APPELLANT TO SERVE TAX COMMISSIONER NOTICE OF APPEAL AS REQUIRED BY R.C. 5717.03 (B) AND 5717.04

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RECEIVED  
SEP 08 2015  
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SUPREME COURT OF OHIO

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CLERK OF COURT  
SUPREME COURT OF OHIO

**APPEAL SHOULD BE DISMISSED FOR FAILURE OF  
APPELLANT TO SERVE TAX COMMISSIONER NOTICE  
OF APPEAL AS REQUIRED BY R.C. 5717.03(B) AND 5717.04**

Appellant's Notice of Appeal does not name the Ohio Tax Commissioner, Joseph W. Testa, as a party and the Certificate of Service does not state it was mailed to him within 30 days of July 16, 2015, the date the Board of Tax Appeals entered its Decision and Order in the cases being herein appealed. This is a mandatory jurisdictional requirement of R.C. 5717.03(B) and 5717.04.

“Appellant's failure to comply with this statutory obligation to serve the notice of appeal on the Tax Commissioner in the prescribed manner deprives this court of jurisdiction to consider the appeal. . . . ‘Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.’” *Olympic Steel, Inc. v. Cuyahoga County Board of Revision*, 110 Ohio St.3d 1242 (08/16/2006). Followed in *Berea City School District Board of Education v. Cuyahoga County Board of Revision et al. v. Manlaw Investment Company, Ltd.*, 111 Ohio St.3d 1219 (11/1/2006).

The Supreme Court *sua sponte* thereafter dismissed like cases. *Board of Education of the Olentangy Local School District v. Delaware County Board of Revision*, 111 Ohio St.3d 1213 (11/01/2006); *Polaris Commerce Center, L.L.C. v. Delaware County Board of Revision*, 111 Ohio St.3d 1214 (11/01/2006); *Mentor Exempted Village School District Board of Education v. Lake County Board of Revision*, 111 Ohio St.3d 1218 (11/01/2006).

This Court recently said that the foregoing jurisdiction requirements for an appeal to the Supreme Court from a BTA decision and order go to the core of the procedural-efficiency concept for valuation of real property and protection of all affected interests. *Mason City School District Board of Education v. Warren County Board of Revision*, 138 Ohio St.3d 153 at 158 (01/21/2014)

This appeal should be dismissed for failing to meet the jurisdictional requirements for the appeal.

Respectfully submitted,  
Donald H. Powers, Council of Record



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COUNSEL FOR APPELLEE, BIDDULPH  
RIDGE EXTENSION, LLC

Certificate of Service

I certify that a copy of this Motion by Appellee, Biddulph Ridge Extension, LLC, to Dismiss the Appeal of Appellant was sent on September 3, 2015 by ordinary U.S. Mail to counsel for Appellant, David H. Seed, Daniel McIntyre, Robert A. Brindza, and David A. Rose, 1111 Superior Avenue, Suite 1025, Cleveland, Ohio 44114; and to Sandra Curtis-Patrick, Assistant to Cuyahoga County Prosecutor Timothy McGinty, Appellant, at Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, Ohio 44113, counsel for Appellees, Cuyahoga County Board of Revision and Cuyahoga County Fiscal Officer.



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Donald H. Powers

COUNSEL FOR APPELLEE, BIDDULPH  
RIDGE EXTENSION, LLC